ORIGINAL

FILED
FEB 14 1992
OFFICE OF THE CLERK

No. 91-6751

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOE MARIO TREVIÑO, JR.,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

Petition for Writ of Certiorari to the
Court of Criminal Appeals of the State of Texas

REPLY BRIEF FOR THE PETITIONER

ARTHUR JOHN BRENDER, JR.

Law Offices of Art Brender
Burk Burnett Building, Suite 500
500 Main Street
Fort Worth, Texas 76102
(817) 334-0171, telephone
(817) 334-0274, telecopier

COUNSEL OF RECORD FOR PETITIONER

BEST AVAILABLE COPY

No. 91-6751

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOE MARIO TREVINO, JR.,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

Petition for Writ of Certiorari to the
Court of Criminal Appeals of the State of Texas

REPLY BRIEF FOR THE PETITIONER

ARTHUR JOHN BRENDER, JR.

Law Offices of Art Brender
Burk Burnett Building, Suite 500
500 Main Street
Fort Worth, Texas 76102
(817) 334-0171, telephone
(817) 334-0274, telecopier

COUNSEL OF RECORD FOR PETITIONER

TABLE OF CONTENTS

page

Table of Authorities i

Reply to Respondent's Jurisdictional Objection to First, Batson Question 2

Conclusion 3

TABLE OF AUTHORITIES

page

Cases:

Batson v. Kentucky, 476 U.S. 79 (1986) 3

Beck v. Alabama, 447 U.S. 625 (1980) 3

Braniff Airways v. Nebraska State Bd. of Equalization & Assessment, 347 U.S. 590 (1954) 3

Dewey v. Des Moines, 173 U.S. 193 (1899) 3

Eddings v. Oklahoma, 455 U.S. 104 (1982) 3

Ford v. Georgia, 498 U.S. ____, 111 S. Ct. ____, 112 L.Ed.2d 935 (1991) . 3

Illinois v. Gates, 462 U.S. 213 (1983) 2

Shapero v. Kentucky Bar Ass'n, 486 U.S. 466 (1988) 3

No. 91-6751

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOE MARIO TREVINO, JR.,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

Petition for Writ of Certiorari to the
Court of Criminal Appeals of the State of Texas

REPLY BRIEF FOR THE PETITIONER

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Joe Mario Trevino, Jr., presents this Sup. Ct. R. 15.6 reply brief, addressed to arguments first raised in respondent State of Texas's brief in opposition to the pending petition for writ of certiorari.

Reply to Respondent's Jurisdictional Objection to First, Batson Question

The respondent state would rest this Court's jurisdiction to review the federal constitutional injury inherent in prosecutors' peremptory exclusion of all African-Americans from petitioner Trevino's capital murder jury, not upon whether the accused pressed for consideration of the federal constitutional injury in the state courts; but rather upon whether the accused presciently requested, in the state courts, the specific, eventually accepted form of relief[1]: the state argues that this Court's jurisdiction fails, simply because petitioner Trevino did not accompany his repeated explications of the federal constitutional injury in state court, with a specific request for a remand specifically for "a Batson hearing."

But "a personal constitutional right," to stand trial for one's life before a jury from which persons of one race have not been systematically eliminated, for example, may certainly be pressed in state court "separate[ly]" from the "judicially created remedy designed to safeguard" and applied "routine[ly]" to violations of the right, Illinois v. Gates, 462 U.S. 213, 223 (1983); and consequently, the sufficiency, for purposes of this

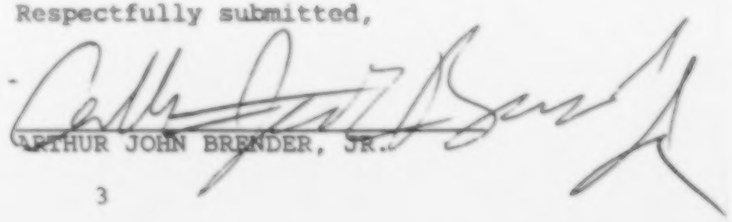
[1]He did. Petitioner Trevino asked his trial court time and again to conduct a hearing to elicit the prosecutors' "reasons" for having peremptorily stricken the African-Americans, 27 Rec. 3294; 30 Rec. 6-7; and again, on appeal, petitioner urged the state's Court of Criminal Appeals to "adopt[]" such a hearing procedure as a matter of right in such cases and thereafter remand petitioner's case to the lower court for a new trial. Brief of the Appellant at 16-17, Trevino v. State, 815 S.W.2d 592 (Tex. Crim. App. 1991).

Court's jurisdiction, of presentation of the "personal constitutional right" in state court is certainly not dependent upon the particular relief requested in that court, see, e.g., Shapero v. Kentucky Bar Ass'n, 486 U.S. 466, 471 n.3 (1988), nor, especially where "erroneous imposition of the death sentence" may have resulted, upon "citation to book and verse," Eddings v. Oklahoma, 455 U.S. 104, 113 n.9; id. at 117 n.* (O'Connor, J. concurring); see also, e.g., Beck v. Alabama, 447 U.S. 625, 630 n.6 (1980), but rather, upon the explication of enough of a factual basis for the personal constitutional right to allow the court itself to discern from such facts - just as this Court has done in Batson v. Kentucky, 476 U.S. 79, 84 n.4 (1986) and Ford v. Georgia, 498 U.S. ___, 111 S. Ct. ___, 112 L.Ed.2d 935, 946-47 (1991) - the specific federal constitutional provision which must be brought to bear. Braniff Airways v. Nebraska State Bd. of Equalization & Assessment, 347 U.S. 590, 598-99 (1954); Dewey v. Des Moines, 173 U.S. 193, 200-01 (1899).

Conclusion

WHEREFORE, all premises of his petition and this reply considered, petitioner prays the writ of certiorari issue.

Respectfully submitted,



ARTHUR JOHN BRENDER, JR.

Law Offices of Art Brender
Burk Burnett Building, Suite 500
500 Main Street
Fort Worth, Texas 76102
(817) 334-0171, telephone
(817) 334-0274, telecopier

COUNSEL OF RECORD FOR PETITIONER